Key to Arrangement of Briefs of Amici Curiae

No.	Title of Brief
1	Brief of State of Texas as Amicus Curiae in Support of Petition for Writ of Certiorari
2	Brief of the Commonwealth of Massachusetts as Amicus Curiae in Support of Petition for a Writ of Certiorari
3	Brief of the State of New Hampshire as Amicus Curiae in Support of the Petition for Writ of Certiorari
4	Brief of Amicus Curiae, Latham Castle, Attorney General of the State of Illinois, in Support of a Petition for Writ of Certiorari
5	Brief of the Commonwealth of Massachusetts as Amicus Curiae
6	Brief of the American Legion, Amicus Curiae
7	Brief for the United States as Amicus Curiae
8	Motion of Amici Curiae for Leave to Participate in Oral Argument, Pursuant to Rulle 44 (7) of the Rules of this Court (for Phil Feldman, Max Shlafrock, et al)
9	Brief for the American Civil Liberties Union as Amicus Curiae
10	Brief of Individual Amici Curiae (In respect to the Florida legislation: Phil Feldman, et al; in respect to the Kentucky legislation: Carl Braden, et al; in respect to the Massachusetts legislation: Otis A. Hood, et al; in respect to the New Hampshire legislation: Oliver S. Allen, et al.)
11	Brief for the Civil Liberties Committee of the Philadelphia Yearly Meeting of the Religious Society of Friends, Amicus Curiae

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Supreme Court of the United States

October Term, 1954

No. 10

COMMONWEALTH OF PENNSYLVANIA,
Petitioner,

vs.

STEVE NELSON
Respondent.

BRIEF OF STATE OF TEXAS AS AMICUS CURIAE IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA.

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Supreme Court of the United States

October Term, 1954

No. 236

COMMONWEALTH OF PENNSYLVANIA.
Petitioner,

vs.

STEVE NELSON
Respondent.

BRIEF OF STATE OF TEXAS AS AMICUS CURIAE IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA.

Pursuant to Paragraph 4 of Rule 42 of the Revised Rules of the Supreme Court of the United States, the State of Texas, acting through its Attorney General, John Ben Shepperd, respectfully files this brief as amicus curiae in support of the petition for writ of certiorari to the Supreme Court of Pennsylvania filed in the above cause by the Commonwealth of Pennslyvania.

I.

OPPINIONS BELOW

The opinion of the Superior Court of Pennsylvania is reported in 172 Pa. Superior Ct. 125, 92 A. 2d 431. The opinion of the Supreme Court of Pennsylvania is reported in 377 Pa. 38, 104 A. 2d 133. The order of the Supreme Court of Pennsylvania denying the petition by the Commonwealth of Pennsylvania for reargument is noted in 377 Pa. 60.

II.

JURISDICTION

The judgment of the Supreme Court of Pennsylvania was entered on January 25, 1954. Its order denying the petition of the Commonwealth of Pennsylvania for rehearing was entered on April 27, 1954.

The jurisdiction of this Court is urged under 28 U.S.C. 1257 (3), the Pennsylvania Supreme Court having held the Pennsylvania sedition statute invalid on the ground that it was repugnant to and therefore superseded by Section 2385 of the Federal Code of Crimes and Criminal Procedure of June 25, 1948, 62 Stat. 808, 18 U.S.C.A. 2385 (the Smith Act). Both the federal and State statutes are set out in the Petition for Writ of Certiorari filed by the Commonwealth of Pennsylvania beginning at page 5.

Futhermore, the Supreme Court of Pennsylvania has decided a federal question of substance not here-

tofore determined by this Court, and has decided it in a way probably not in accord with applicable decisions of this Court.

III.

QUESTIONS PRESENTED

The statement of Questions Presented for Review contained in the Petition for Writ of Certiorari filed by the Commonwealth of Pennsylvania, beginning at page 4 thereof, is referred to and adopted.

IV.

STATUTES INVOLVED

Section 2385 of the Federal Code of Crimes and Criminal Procedure of June 25, 1948, 62 Stat. 808, 18 U.S.C.A. 2385, and Section 207 of the Pennsylvania Penal Code of 1939, 18 Purd. Penna. Stat. Ann. 4207, both of which are set forth in the Petition for Writ of Certiorari filed by the Commonwealth of Pennsylvania, beginning at page 5 thereof.

V.

STATEMENT OF THE CASE

The statement of the case contained in the Petition for Writ of Certiorari filed by the Commonwealth of Pennsylvania, beginning at page 9 thereof, is referred to and adopted.

VI

ARGUMENT

Point 1

A State may punish acts committed within its territory which advocate the overthrow of the government of the United States by force and violence.

Argument and Authorities

The majority opinion of the Pennsylvania Supreme Court in this case does not contend that State statutes outlawing acts of sedition against either the State or the United States, of which the State is an integral part, are in violation of any constitutional provision. In fact it assumes that they are unassailable insofar as any constitutional prohibition is concerned, as well it might in view of the many decisions by the United States Supreme Court itself clearly and unconditionally upholding such laws, including *Gitlow v. New York*, 268 U.S. 652 (1925), *Whitney v. California*, 274 U.S. 357 (1927), and *Gilbert v. Minnesota*, 254 U.S. 325 (1920). In the *Gitlow* case it is stated:

> " . . . And a State may penalize utterances which openly advocate the overthrow of the representative and constitutional form of government of the United States and the several states, by violence or other unlawful means . . ."

And in the *Whitney* case it is stated:

> " . . . that a State in the exercise of its police power may punish those who abuse this freedom (of speech) by utterances inimical to the public welfare, tending to incite to crime, disturb the public peace, or endanger the foundations of organized government and threaten its overthrow by unlawful means, is not open to question. . . ."

These cases are discussed and quoted from in the Petition for Writ of Certiorari filed herein by the Commonwealth of Pennsylvania. Futher repetition would serve no useful purpose, especially since there is actually no dispute of this premise.

In *Dennis v. United States*, 341 U.S. 494 (1951), this Court has recently cited the *Gitlow* case with approval as authority for upholding anti-sedition legislation in general, and in the *Gitlow* case this Court upheld a New York State statute very similar in substance to the Smith Act, and in general similar to the Pennsylvania act involved in this case. It is clear that there would be no question of the authority of the States to act in this respect in the absence of the federal Smith Act.

Point 2

The federal Smith Act (18 U.S.C.A. 2385) does not supersede the Pennsylvania sedition statute (Sec. 207 of the Pennsylvania Penal Code of June 24, 1939).